

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION**

**NATIONAL RAILROAD  
PASSENGER CORPORATION. dba Amtrak  
and  
BNSF RAILWAY COMPANY,**

**Plaintiffs,**

**v.**

**MS CONTRACTING, LLC,**

**Defendant.**

**CASE NO. 2:22-CV-00037-HEA**

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO  
STAY LITIGATION PROCEEDINGS PENDING NTSB INVESTIGATION**

Plaintiffs National Railroad Passenger Corporation (Amtrak) and BNSF Railway Company (“BNSF”) provide the following response to Defendant’s Motion to Stay:

1. This case arises out of the derailment of an Amtrak passenger train near Mendon, MO on June 27, 2022 (“the Mendon Derailment”).
2. Certain transportation accidents such as the Mendon Derailment are investigated by the National Transportation Safety Board ("NTSB") pursuant to its statutory authority.
3. The Mendon Derailment is currently under investigation by the NTSB. *See* NTSB’s Preliminary Report: Railroad RRD22MR010, available at:  
<https://www.nts.gov/investigations/Pages/RRD22MR010.aspx>.
4. Plaintiffs Amtrak and BNSF have been designated by the NTSB as parties to the investigation under 49 C.F.R. § 831.11(a) and are, therefore, bound by the restrictions on the release of investigative information set forth in 49 C.F.R. § 831.13(b).

5. As Defendant notes in its motion, due to the ongoing NTSB investigation, 49 C.F.R. § 831.13(c), prohibits the release of information obtained during an investigation before the NTSB releases it to the public.

6. To date, the NTSB has yet to make any investigative information available on its public docket.

7. Consequently, Plaintiffs do not oppose Defendant's motion, although 49 C.F.R. Part 831.13 does not place restrictions on Defendant from responding to Plaintiffs' Complaint in this action, and Defendant should be required to timely do so.

8. As to the remaining phases of the litigation in this action, Plaintiffs agree that a stay is appropriate until the NTSB has released the information obtained during its investigation to the public.

9. However, this case is one of ten case cases currently pending related to the Mendon Derailment. The majority of the cases are brought by passengers, although there are presently two employee cases and one case filed by the family of deceased MS Contracting truck driver Billy Barton. To Plaintiffs' knowledge, all of the cases are pending either before this Court or in state court before the Circuit Court of Chariton County, Missouri. A chart identifying each of the cases currently pending is attached as Exhibit A.

10. Due to the number of other cases pending before this Court and in state Court, Plaintiffs have significant concerns over inconsistent and conflicting rulings that may result in prejudice to Plaintiffs as to their claims in this action.

11. Defendant is also a party to all of the cases pending before this Court as follows: (1) *Gallaway, et al. v. BNSF Railway Company, et al.*, Case No. 2:22-CV-00038-JMB; (2) *Stephens v. Amtrak, et al.*, Case No. 2:22-CV-00041-RLW; (3) *Williams v. Amtrak, et al.*, Case

No. 2:22-CV-00040-HEA; and (4) *Carreon, et al. v. BNSF Railway Company, et al.*, Case No. 2:22-cv-00044-SPM. Plaintiffs respectfully suggest that for purposes of avoidance of inconsistent rulings or results, any stay in this action should at a minimum also be entered in the companion actions pending before this Court.

12. To the extent that the Court issues a stay in this action, Plaintiffs reserve the right to seek relief from the stay so that Plaintiffs may proceed with their claims in this action as necessary based upon the NTSB investigation or proceedings in other cases arising out of the Mendon Derailment.

WHEREFORE, Plaintiffs Amtrak and BNSF respectfully request that the Court deny Defendant's motion as to Defendant's obligation to respond to the pleadings, that the Court grant the stay in this action and in the companion passenger and employee cases. and that the Court grant such further relief the Court deems just.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on the 25th day of July, 2022, the foregoing was filed utilizing the Court's ECF system which served the same on the following counsel of record:

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